



General Assembly

January Session, 2009

***Raised Bill No. 6233***

LCO No. 2439

\*02439\_\_\_\_\_BA\_\*

Referred to Committee on Banks

Introduced by:  
(BA)

***AN ACT CONCERNING SAFE HARBOR PROVISIONS FOR  
REVOLVING LOANS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (c) of section 49-2 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2009*):

4 (c) Advancements may also be made by a mortgagee, or the  
5 assignee of any mortgagee, under an open-end mortgage to the  
6 original mortgagor, or to the assign or assigns of the original  
7 mortgagor who assume the existing mortgage, or any of them, and any  
8 such mortgage debt and future advances shall, from the time such  
9 mortgage deed is recorded, without regard to whether the terms and  
10 conditions upon which such advances will be made are contained in  
11 the mortgage deed and, in the case of an open-end mortgage securing  
12 a commercial [revolving] future advance loan, a consumer revolving  
13 loan or a letter of credit, without regard to whether the authorized  
14 amount of indebtedness shall at that time or any time have been fully  
15 advanced, be a part of the debt due such mortgagee and be secured by  
16 such mortgage equally with the debts and obligations secured thereby

17 at the time of recording the mortgage deed and have the same priority  
18 over the rights of others who may acquire any rights in, or liens upon,  
19 the mortgaged real estate subsequent to the recording of such  
20 mortgage deed, provided: (1) The heading of any such mortgage deed  
21 shall be clearly entitled "Open-End Mortgage"; (2) the mortgage deed  
22 shall contain specific provisions permitting such advancements and, if  
23 applicable, shall specify that such advancements are made pursuant to  
24 a commercial [revolving] future advance loan agreement, a consumer  
25 revolving loan agreement or a letter of credit; (3) the mortgage deed  
26 shall state the full amount of the loan therein authorized; (4) the terms  
27 of repayment of such advancements shall not extend the time of  
28 repayment beyond the maturity of the original mortgage debt,  
29 provided this subdivision shall not be applicable where such  
30 advancements are made or would be made pursuant to a commercial  
31 [revolving] future advance loan agreement, a consumer revolving loan  
32 agreement or a letter of credit, and the mortgage deed specifies that  
33 such advancements are repayable upon demand or by a date which  
34 shall not be later than thirty years from the date of the mortgage; (5)  
35 such advancements shall be secured or evidenced by a note or notes  
36 signed by the original mortgagor or mortgagors or any assign or  
37 assigns of the original mortgagor or mortgagors who assume the  
38 existing mortgage, or any of them, but no note shall be required with  
39 respect to any advancements made pursuant to a commercial  
40 [revolving] future advance loan agreement, a consumer revolving loan  
41 agreement or a letter of credit as long as such advancements are  
42 recorded in the books and records of the original mortgagee or its  
43 assignee; (6) the original mortgage shall be executed and recorded after  
44 October 1, 1955; (7) the original mortgagor or mortgagors, or any  
45 assign or assigns of the original mortgagor or mortgagors who assume  
46 the existing mortgage, or any of them, are hereby authorized to record  
47 a written notice terminating the right to make such optional future  
48 advances secured by such mortgage or limiting such advances to not  
49 more than the amount actually advanced at the time of the recording  
50 of such notice, provided a copy of such written notice shall also be sent

51 by registered or certified mail, postage prepaid and return receipt  
52 requested, to the mortgagee, or a copy of such written notice shall be  
53 delivered to the mortgagee by a proper officer or an indifferent person  
54 and a receipt for the same received from the mortgagee, and such  
55 notice, unless a later date is recorded or specified in the notice, shall be  
56 effective from the time it is received by the mortgagee; (8) except that if  
57 any such optional future advance or advances are made by the  
58 mortgagee, or the assignee of any mortgagee, to the original mortgagor  
59 or mortgagors, or any assign or assigns who assume the existing  
60 mortgage, or any of them, after receipt of written notice of any  
61 subsequent mortgage, lien, attachment, lis pendens, legal proceeding  
62 or adjudication against such real property, then the amount of any  
63 such advance, other than an advance made pursuant to a commercial  
64 [revolving] future advance loan agreement or a letter of credit, shall  
65 not be a priority as against any such mortgage, lien, attachment, lis  
66 pendens or adjudication of which such written notice was given; (9)  
67 any notice given to the mortgagee under the terms of subdivision (8) of  
68 this subsection shall be deemed valid and binding upon the original  
69 mortgagee or any assignee of the original mortgagee, in the case of a  
70 mortgagee other than a banking institution, on the next business day  
71 following receipt by such mortgagee of such notice sent by registered  
72 or certified mail, postage prepaid and return receipt requested, or by  
73 hand delivery with a signed receipt, and in the case of a mortgagee  
74 which is a banking institution, on the next business day following  
75 receipt at the main office of such banking institution of such notice sent  
76 by registered or certified mail, postage prepaid and return receipt  
77 requested, or by hand delivery with a signed receipt. For the purposes  
78 of this subsection: (A) "Banking institution" means a bank and trust  
79 company, a national banking association having its main office in this  
80 state, a savings bank, a federal savings bank having its main office in  
81 this state, a savings and loan association, a federal savings and loan  
82 association having its main office in this state, a credit union having  
83 assets of two million dollars or more, or a federal credit union having  
84 its main office in this state and having assets of two million dollars or

85 more; (B) "commercial [revolving] future advance loan" means a loan  
86 to a foreign or domestic corporation, partnership, limited liability  
87 company, sole proprietorship, association or entity, or any  
88 combination thereof, the proceeds of which are not intended primarily  
89 for personal, family or household purposes, which loan entails  
90 advances of all or part of the loan proceeds and repayments of all or  
91 part of the outstanding balance of the loan from time to time, and  
92 includes (i) a commercial revolving loan wherein all or part of the loan  
93 proceeds that have been repaid may be readvanced, and (ii) a  
94 commercial nonrevolving loan wherein previously advanced loan  
95 proceeds, once repaid, cannot be readvanced; and (C) "consumer  
96 revolving loan" means a loan to one or more individuals, the proceeds  
97 of which are intended primarily for personal, family or household  
98 purposes, which is secured by a mortgage on residential real property,  
99 and is made pursuant to an agreement between the mortgagor and  
100 mortgagee which (i) provides for advancements of all or part of the  
101 loan proceeds during a period of time which shall not exceed ten years  
102 from the date of such agreement and for repayments of the loan from  
103 time to time, (ii) provides for payments to be applied at least in part to  
104 the unpaid principal balance not later than ten years from the date of  
105 the loan, (iii) does not authorize access to the loan proceeds by a credit  
106 card or any similar instrument or device, whether known as a credit  
107 card, credit plate, or by any other name, issued with or without a fee  
108 by an issuer for the use of the cardholder in obtaining money, goods,  
109 services, or anything else of value on credit, and (iv) does not provide  
110 that such a revolving loan to more than one mortgagor will be  
111 immediately due and payable upon the death of fewer than all the  
112 mortgagors who signed the revolving loan agreement. Nothing in this  
113 subsection shall affect the validity or enforceability of any loan  
114 agreement which provides for future advancements by a lender to a  
115 borrower as between such parties or their heirs, successors or assigns,  
116 or shall affect the validity or enforceability of any mortgage securing  
117 any such loan that would be valid and enforceable without the  
118 provisions of this subsection.

119 Sec. 2. Subsection (a) of section 49-4b of the general statutes is  
 120 repealed and the following is substituted in lieu thereof (*Effective*  
 121 *October 1, 2009*):

122 (a) If an open-end mortgage meets the requirements of this section,  
 123 such mortgage shall be deemed to give sufficient notice of the nature  
 124 of the obligation to secure the obligation of any person who is  
 125 secondarily liable for an open-end loan, including (1) a commercial  
 126 [revolving] future advance loan, as defined in subsection (c) of section  
 127 49-2, as amended by this act, without regard to whether the authorized  
 128 amount of indebtedness of such [revolving] loan constituting the  
 129 underlying obligation shall at that time or at any time have been fully  
 130 advanced, (2) future advances under such open-end loan, to the extent  
 131 that such mortgagor is secondarily liable for such future advances, and  
 132 (3) a letter of credit. Such mortgagor's secondary liability for such  
 133 future advances shall be secured by such open-end mortgage equally  
 134 with the obligation secured by such mortgage at the time of recording  
 135 such mortgage deed and shall have the same priority over the rights of  
 136 others who may acquire any rights in, or liens upon, the mortgaged  
 137 real estate subsequent to the recording of such mortgage deed.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	49-2(c)
Sec. 2	<i>October 1, 2009</i>	49-4b(a)

***Statement of Purpose:***

To protect the priority of mortgages involving commercial nonrevolving loan agreements.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*